

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL D. JACKSON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Richmond, Va.

*Docket No. 97-1986; Submitted on the Record;  
Issued April 5, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has any continuing disability causally related to his accepted employment injury on or after June 30, 1996.

The Board has duly reviewed the case on appeal and finds that appellant has no disability after June 30, 1996 causally related to his accepted employment injury.

Appellant filed a claim alleging on November 30, 1995 he aggravated his preexisting condition of degenerative disc disease. The Office of Workers' Compensation Programs denied his claim by decision dated March 11, 1996, finding that appellant failed to establish fact of injury. Appellant requested a review of the written record on April 9, 1996. By decision dated September 18, 1996 and finalized September 20, 1996, the hearing representative set aside the Office's March 11, 1996 decision and found that appellant had established that he sustained a lumbar strain and temporary aggravation of his degenerative disc disease ceasing no later than June 30, 1996. On October 15, 1996 the Office accepted appellant's claim. Appellant requested reconsideration on March 11, 1997 and the Office denied modification of its prior decision on April 15, 1997.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In this case, appellant initially sought treatment from Dr. Kenneth S. White, a chiropractor. In his report dated December 5, 1995, Dr. White noted that he examined appellant on December 4, 1995 and that x-rays demonstrated a retrolisthesis at L4-5 and decreased disc height of L4-5. He further diagnosed subluxations at C5-6, T2-3, L1 and L5 through palpation of the spine. Dr. White continued to support appellant's claims for disability. Section 8101(2) of the Federal Employees' Compensation Act<sup>5</sup> provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

At the time of the hearing representative's decision, there was no evidence that the x-rays taken by Dr. White on December 4, 1995 demonstrated a subluxation as defined by the Office and he had not established that he was a physician as defined by the Act.

In a report dated March 27, 1996, Dr. Michal A. Douglas, a Board-certified neurosurgeon, noted appellant's history of injury and found that x-rays demonstrated a decreased disc space. He found that appellant had sustained an exacerbation of his prior injury and recommended further testing. On April 8, 1996 Dr. Douglas again stated that appellant's November 1995 employment incident aggravated his preexisting back condition. As this report does not address any period of disability it is not entitled to the weight of the medical evidence on this issue.

In a report dated July 2, 1996, Dr. Graves T. Owen, a physician specializing in addiction psychiatry, noted on examination that appellant reported that his back condition had limited his ability to sit, walk, stand, bend, twist or stoop for extended periods of time. He recommended that appellant attend a pain clinic. On August 14, 1996 Dr. Owen stated that appellant had entered the pain clinic and that he could not return to work until September 1, 1996. He stated that appellant's endurance was not sufficient and that his pain level was too significant to allow him to perform the duties his work requires. These reports do not contain a history of injury, a diagnosis of appellant's condition and an opinion on the causal relationship between appellant's diagnosed condition and disability and his accepted employment injury. The reports are insufficient to constitute the weight of the medical opinion evidence.

The employing establishment referred appellant for examination by Dr. Casey Cochran, Board-certified in preventive occupational medicine. In a report dated May 17, 1996, Dr. Cochran noted appellant's history of injury, reviewed the x-rays and other tests and performed a physical examination. Dr. Cochran specifically reviewed the December 4, 1995 x-rays and found them "normal." Dr. Cochran did not discuss any findings on the x-rays.<sup>6</sup> Dr. Cochran diagnosed aggravation of degenerative disc disease and concluded that appellant's

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<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8101(2).

<sup>6</sup> Cheryl L. Veale, 47 ECAB 607 (1996).

perceived disability was out of proportion to actual physical findings. He stated that appellant could perform certain job functions. Dr. Cochran reviewed appellant's job description and stated that appellant was capable of performing these duties. He noted that appellant should be allowed to vary his activities such as sitting, standing, walking, bending and stooping and that he should lift no more than 25 pounds.

Based on the report of Dr. Cochran, the only medical evidence of record which contained a history of injury, physical findings, a diagnosis and an opinion on appellant's continuing disability, the Office properly found that appellant had established an employment injury in the performance of duty and that disability related to that injury ceased no later than June 30, 1996.

Following the hearing representative's September 20, 1996 decision, appellant requested reconsideration and submitted additional new evidence in an attempt to establish that he had continuing disability and that Dr. White was a physician for the purposes of the Act. In support of his claim, appellant submitted additional medical evidence. In a report dated December 2, 1996, Dr. White stated that retrolisthesis of L4-5 was a subluxation at that level. He contended that he, therefore, was a physician for the purposes of the Act.

The Office has regulations which specify, "A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section."<sup>7</sup> The Office's regulations provide that the term subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on x-ray film to individuals trained in the reading of x-rays.<sup>8</sup>

Therefore, the Board finds that Dr. White diagnosed a subluxation of the spine as demonstrated by x-ray at L4-5. However, the Board has also held that the diagnosis of subluxation must be established as employment related in order for appellant's claim to be accepted and for chiropractic treatment to be reimbursable.<sup>9</sup> Dr. White's reports diagnosed lumbar sprain and strain and indicate that this condition is causally related to appellant's employment injury. Dr. White initially included subluxation at L4-5 as a diagnosed condition on May 29, 1996 and indicated with a checkmark "yes" that this condition was causally related to appellant's employment. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>10</sup>

As Dr. White's reports do not establish that appellant's spine subluxation was causally related to his employment injury, his reports are not sufficient to establish appellant's claim for a spinal subluxation.

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<sup>7</sup> 20 C.F.R. § 10.400(e).

<sup>8</sup> 20 C.F.R. § 10.401(e).

<sup>9</sup> *Theresa M. Fitzgerald*, 47 ECAB 689-90 (1996).

<sup>10</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Appellant submitted a report dated February 6, 1997 from Dr. Thomas L. Pamer, a chiropractor, who reviewed the December 4, 1995 x-rays and found multiple spinal subluxations. Dr. Pamer stated that the spinal subluxations were evident prior to his September 30, 1996 examination and that these conditions were chronic and preexisting. Dr. Pamer opined that the subluxations were in direct correlation of the history of appellant's current condition, symptomatology and previous care. He stated that the previous preexisting low back condition was severely aggravated on November 30, 1995 which required acute emergency care.

As Dr. Pamer diagnosed subluxations as demonstrated by x-ray, he is a physician for the purpose of the Act. Dr. Pamer found right spinous rotational mild subluxation complex L1-5 inclusive. He noted appellant's November 30, 1995 employment injury but did not provide a history of injury. Dr. Pamer offered an opinion that appellant's current condition was due to the November 30, 1995 employment injury but failed to provide the necessary medical rationale explaining how the employment incident resulted in an aggravation of his spinal subluxations. Therefore, his report is not sufficient to meet appellant's burden of proof in establishing continuing disability.

Appellant also submitted a report dated February 26, 1997 from Dr. Bruce A. Rodan, a Board-certified radiologist. Dr. Rodan reviewed the December 4, 1995 x-rays and did not address the issue of whether these findings constituted a spinal subluxation as defined by the Office and his report is not sufficient to meet appellant's burden of proof.

As the record does not contain medical evidence establishing that appellant's diagnosed condition of spinal subluxation is causally related to his accepted employment injury and that any continuing disability is causally related to this condition, appellant has failed to establish continuing disability on or after June 30, 1996.

The decisions of the Office of Workers' Compensation Programs dated April 15, 1997 and September 18, 1996 are hereby affirmed.

Dated, Washington, D.C.  
April 5, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member